REMARKS

The Final Office Action mailed August 12, 2008 considered claims 36-46. Claims 36-46 were rejected under 35 U.S.C. 103(a) as being unpatentable over Avvari (US 7,165,074) hereinafter *Avvari '074,* in view of Baker (US 6,282,698) hereinafter *Baker.*

Claims 36 and 46 were rejected under 35 U.S.C. 103(a) as being unpatentable over Avvari (US 6,978,401) hereinafter *Avvari '401,* in view of Baker.[1]

By this paper, claim 36 has been amended. Claims 36-46 remain pending in the application.

The Office Action admits that neither *Avvari '074*, nor *Avvari '401* teaches generating code from intermediate code, that specified the differences between the first and second binary software builds as is recited by the claims of the present application. See Office Action at page 4 and page 7. The Office Action cites to *Baker* at Figure 6, col. 12, lines 7-60 and col. 5 line 36 through col. 6, line 5. This portion of *Baker* is included to illustrate actual testing performed using existing similarity detecting tools after operations are performed on bytecode that enhances the ability to compare two different disassemblies of bytecode.

In particular, *Baker* notes that there are know techniques (e.g. Siff, Dup, and Diff) for detecting similarities in text files. See *Baker* at col. 1, lines 16-56. While these techniques can be used to compare different versions of source code (see *Baker* at col. 1, lines 57-59), they are not as well suited for binary code because when compiling source code, secondary changes may be introduced into the binary code such that two versions of binary code compiled from slightly different source code are vastly different. See *Baker* at col. 1, line 57 through col. 2, line 11. *Baker* thus discloses changes that can be made to binary code such that the binary code can be compared by the known techniques. In particular, *Baker* teaches that (1) "a Java bytecode file is disassembled," (2) "after disassembly of the bytecode file, the code of each method in the file is extracted" (3) "a lexical analyzer is applied to the disassembled bytecode for preprocessing" "additional preprocessing of the disassembled bytecode includes using positional encoding to calculate offsets," (4) "*after preprocessing* the disassembled bytecode as described above, the

[1] Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

preprocessed bytecode is passed to similarity detection routines, e.g., Dup, Siff and Diff, for determining any similarities between the bytecode files" (emphasis added). See *Baker* at col. 3, lines 32-48. Thus Baker clearly teaches preprocessing prior applying to detection routines, but does not teach "generating code, from intermediate code, that specified the differences between the first and second binary software builds" as is recited by the claims of the present application.

In direct contrast, the claims of the present application recite "determining what code produced the differences between the first and second binary software builds; and ***then*** generating code, from intermediate code, that specified the differences between the first and second binary software builds." This is clearly not taught by *Baker*. Rather, the cited portions of Baker only show a comparison using similarity detection routines without applying an offset and using similarity detection routines when applying an offset. See Baker at Figure 6 and at col. 12, lines 7-13.

Additionally, the claims of the present application have further been amended to recite "displaying the code segment that produced the differences between the first and second binary software builds." This limitation does not appear to be taught by the art cited in the Office Action.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 14th day of October, 2008.

Respectfully submitted,

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